SHOOK LIN & BOK

v.

YOE KIAN TECK & ORS.

HIGH COURT, SINGAPORE
MICHAEL HWANG JC
[M.C. SUIT NO. 7175 OF 1991]
12 DECEMBER 1991

CIVIL PROCEDURE: *Solicitor's costs taxed and quantified - No appeal against taxed costs - Amount taxed finalised - Refusal to pay taxed costs - Suit claiming taxed costs - No defence - Summary judgment - Affidavit in reply enclosing defence and affidavit of unrelated suits - No evidence of fixed fee.*

The defendants engaged the plaintiffs to represent them in their claim against Atlas Properties (Pte.) Ltd. (the Developer), arising from a shortfall in the area of a housing unit in Goodluck Garden purchased by them. The claim was eventually not pursued. The plaintiffs sued the defendants for their taxed costs amounting to $6,613.63 less a sum of $,1000 paid to account, leaving balance of $5,613.63.

The plaintiffs costs was taxed at a sum of $6,613.63. There was no appeal against the certificate of the deputy Registrar. When the defendants failed to make payment of this sum the plaintiffs commenced proceeding in this suit for recovery. The plaintiffs then applied for summary judgment before the deputy Registrar of the subordinate Courts who gave unconditional leave to defend the plaintiffs appeal.

The defendants did not file a defence in this suit. However in their affidavit in reply to the summary judgment application the defendants relied on another defence belonging to a different suit and the affidavit of Peter Koh.

Held:

[1] Under O. 59 r. 33 of the Rules of the Supreme Court, the certificate of the Registrar upon taxation "unless set aside, shall be conclusive as to the amount thereof". There was no application to set aside the certificate of the deputy Registrar and accordingly there was no defence to a claim based on that certificate.

[2] The plaintiff could rely on the Deputy Registrar's certificate as conclusive evidence of the amount of legal fees properly due from the defendants to the plaintiffs. When the order for taxation was not challenged, the situation was analogous to an interlocutory judgment for damages to be assessed with the taxation being comparable to an assessment of damages.

[3] Once the validity of the deputy Registrar's certificate was not challenged, it must follow that it would have to be enforced by a separate action - otherwise what would be the significance of the certificate? Common law must concur with common sense in giving the plaintiff a practical remedy to enforce the certificate.

[4] The defendants' liability to pay taxed costs was precluded from further re-litigation upon the expiry of the appeal period, either by way of cause of action estoppel or issue estoppel and no special circumstances existed in this case to prevent the operation of this doctrine.

[5] The plaintiffs' application for an order for taxation was made pursuant to s. 117(1) of the Legal Profession Act 1985 edition. Such an application should have been made on a petition of course rather than by way of summons in chambers, but the irregularity was clearly not such as to nullify the application or the subsequent taxation, bearing in mind the general powers of the Registrar to tax costs under O. 59 r. 12.

[6] There was no evidence that the defendants had made any agreement with the plaintiffs either through themselves or their agents as to fixed fees.

[Plaintiffs' appeal allowed.]

Cases referred to:
Hamiltan v. Carter and Bell [1932] 173 LT JO 452 ***(foll)***
Arnold v. National Westminister Bank Plc [1991] 2 WLR 1177 ***(cit)***

Legislation referred to:
Legal Profession Act (Ch 161, 1985 Ed.) [Sing], ss. 108, 110, 117(1)
Legal Profession Act (1990 Ed.) [Sing], ss. 111, 113, 120(1).
Rules of the Supreme Court [Sing], O. 59 r. 12, O. 59 r. 33.
Solicitors Act 1974 [UK], s. 72(4).

For the appellants/plaintiffs - Chong Yee Leong; (Raymond Low with him)
For the respondents/defendants - James Goh Hean Ngee

JUDGMENT

Micheal Hwang JC:

This is an appeal from the decision of the deputy Registrar of the Subordinate Courts granting unconditional leave to the defendants to defend the claim of the plaintiffs for the amount of their professional fees as taxed by the deputy Registrar.

Sometime in 1985, the first and second defendants engaged the plaintiffs, a firm of solicitors, to represent the defendants in their claim against Atlas Properties Pte. Ltd. ("the Developer"), arising from a shortfall in the area of a housing unit in Goodluck Garden purchased by the defendants. The plaintiffs therefore filed a claim in Originating Summons No. 1283 of 1985 ("the defendants' summons") on behalf of the defendants against the developer, which claim was eventually not pursued.

The plaintiffs now sue the defendants for their taxed costs in respect of the defendants' summons amounting to $6,613.63, less a sum of $1,000 paid to account, leaving a balance of $5,613.63.

A number of other purchasers in Goodluck Garden also had similar claims against the developer for shortfalls in the area of the units which they had purchased ("the Goodluck Garden claims"). The defendants contended (and this was not denied) that the plaintiffs represented at least 30 such purchasers in pursuing these claims.

The defendants did not file a defence in this suit. However, in their affidavit (sworn by their solicitor) in reply to the plaintiffs' application for summary judgment, the defendants relied on:

(a) the defence ("the 7176 defence") filed by two other purchasers (and clients of the plaintiffs) in MC Suit No. 7176 of l991 ("the 7176 defendants") and

(b) an affidavit sworn by Peter Koh, the husband of yet another purchaser, in High Court Originating Summons No. 1208 of 1985 ("the Peter Koh Affidavit"), which set out the history of negotiations between certain purchasers and the plaintiffs in relation to their fees for acting in the Goodluck Garden claims.

The 7176 Defence pleaded that the plaintiffs had made representations and statements to the 7176 defendants to the following effect:

(a) that the legal fees which the plaintiffs would charge for acting in the 7176 defendants' claim against the developer arising from the shortfall in area in their unit in Goodluck Garden would be $2,000 with a variance of 10% either way;

(b) this sum would be the costs due for work done up to the High Court hearing and would exclude any work done for any appeal to the Court of Appeal; and

(c) this sum would be charged by the plaintiffs only if there was a group of 30 to 35 persons appointing the plaintiffs and would not be applicable if only the 7176 defendants appointed the plaintiffs.

I will deal later with the question of to whom these alleged representations and statements were made.

The defendants adopted the 7176 defence and contended that they were not liable to pay more than the agreed fees to the plaintiffs, presumably relying on s. 108 of the Legal Profession Act, Ch 161, 1985 Edn., (now s. 111 of the 1990 Edition). I observe in passing that s. 108 requires such an agreement to be in writing and signed by the client but it is clear that an oral agreement between solicitor and client as to fixed fees, if proved, would be binding on the solicitor, because the client could rely on his common law right which is undisturbed by statute (see *Cordery's Law relating to Solicitors* (8th Edn.), pp. 156-7 and cases there cited).

The plaintiffs denied that any such agreement as to costs had been made and claimed to be entitled to the full costs which had been allowed by the deputy Registrar on taxation in the defendants' summons.

Although Counsel made no detailed reference to the proceedings in the defendants' summons, I found it useful to delve further into the history of that summons to see how the plaintiffs' entitlement to the sum claimed arose.

When the defendants' claim against the developer was close to settlement, the plaintiffs made an application in the defendants' summons (SIC No. 2318 of 1990) asking for two orders:

(1) to discharge themselves from further acting as solicitors for the defendants; and

(2) to have their solicitor and client bill taxed by the Registrar pursuant to s. 117(1) of the Legal Profession Act 1985 Edition (now s. 120(1) of the 1990 Edition).

This application was supported by a lengthy affidavit by Ms Engelin Teh, a partner of the plaintiffs, which set out the history of the discussions between the plaintiffs and the defendants on the issue of costs, including the allegation of agreed fees and the plaintiffs' denial of such agreement. In the last paragraph of this affidavit Ms. Teh stated that, because of the disagreement between the plaintiffs and the defendants in relation to the amount of costs owing, the plaintiffs could no longer continue to act for the defendants in this matter and she went on to say:

> the most amicable way of resolving the disagreement on the plaintiffs' [i.e., the defendants in this suit] solicitor and client costs, is for the Court to first decide whether or not [Shook Lin & Bok] had agreed unconditionally to charge only $2,000 for the solicitor and client costs, and thereafter, if necessary, to tax the said costs to ascertain what would be the reasonable amount due to [Shook Lin & Bok].

The first defendant filed an affidavit in reply to Ms. Teh's affidavit which merely referred to the Peter Koh Affidavit (which is discussed later) and went on to say:

4. I fully agree with the contents of Mr. Koh's affidavit and wish to rely on it to support my contention that the costs of the action was agreed at $2,000.

5. I therefore pray for Ms. Shook Lin & Bok's application for costs to be taxed to be dismissed.

SIC No. 2318 of 1990 was heard on 20 July 1990 by the Senior Assistant Registrar together with similar applications in a number of other originating summonses involving the Goodluck Garden claims. The notes of evidence of one such hearing (Originating Summons No. 1219 of 1985 relating to MC Suit 7176 of 1991) were exhibited in this suit. I was informed by Counsel that the proceedings in that application determined the outcome of all applications heard on that day, including SIC No. 2318 of 1990. Prior to the hearing before the Senior Assistant Registrar in relation to Originating Summons no. 1219 of 1985 the plaintiffs filed an affidavit sworn by Ms. Engelin Teh in similar terms to her affidavit described above. Likewise, the respondents to the application filed an affidavit in identical terms to the first defendant's affidavit described above. Notwithstanding that issue had fairly and squarely been joined on the alleged agreement for fixed costs, it appears from the notes of evidence (as supplemented by Counsel who appeared before me, who had also appeared at that hearing) that:

(a) the issue of the alleged agreement as to fixed costs had been raised before the Senior Assistant Registrar; but

(b) he had said that this matter should be left to taxing master to decide.

Accordingly, the Senior Assistant Registrar granted an order in each application (including SIC No. 2318 of 1990) that the plaintiffs' solicitor and client bill be taxed by the Registrar.

The defendants did not appeal against the order of the Senior Assistant Registrar in SIC No. 2318 of 1990. Subsequently, at the taxation before the deputy Registrar, according to defence Counsel, he raised the question of the agreed costs again with the deputy Registrar but was told that the deputy Registrar did not want to decide on the question of agreed costs. In the circumstances, the taxation proceeded and the plaintiffs' solicitor and client bill was taxed at a sum of $6,613.63 (including taxation and allocatur fees). After an earlier payment to account by the defendants had been deducted, there was a net sum of $5,613.63 due from the defendants to the plaintiffs on the taxed bill.

Again there was no appeal against the certificate of the deputy Registrar. When the defendants failed to make payment of this sum the plaintiffs commenced proceedings in this suit for recovery. The plaintiffs then applied for summary judgment before the deputy Registrar of the subordinate Courts, who gave unconditional leave to defend.

The plaintiffs appealed to me and, after reviewing the papers and hearing arguments from Counsel, I allowed the appeal and entered judgment in favour of the plaintiffs for the sum claimed.

Under O. 59 r. 33 of the Rules of the Supreme Court, the certificate of the Registrar upon taxation "unless set aside, shall be conclusive as to the amount thereof" There was no application to set aside the certificate of the deputy Registrar and accordingly I saw no defence to a claim based on that certificate.

Defence Counsel sought to argue that the rule only precludes an argument about quantum and not as to liability. I could not accept that argument.

In the first place, the defendants did not, and could not, dispute that they were under a liability to pay the plaintiffs some legal fees, and, once the validity of the deputy Registrar's certificate was not disputed, O. 59 r. 33 must be construed as conclusively fixing the quantum of that liability. I note that there is no Singapore equivalent to the position in England where a Registrar's certificate can be converted into a judgment under s. 72(4) of the Solicitors Act 1974, but it seemed to me that the plaintiffs could rely on the deputy Registrar's certificate as conclusive evidence of the amount of legal fees properly due from the defendants to the plaintiffs. When the order for taxation was not challenged, the situation was analogous to an interlocutory judgment for damages to be assessed with the taxation being comparable to an assessment of damages. I also find some indirect support for my view in *Hamilton v. Carterand Bell* [1932] 173 LT Jo 452. In that case solicitors issued a summons to tax their solicitor and client bills and an order to tax was made in the presence of the client who did not appeal against the order for taxation. At taxation the client made the objection that there had been an agreement as to fixed fees; this objection was overruled by the taxing master and the bill was taxed, after which the solicitors issued a summons to sign final judgment for the taxed sum (a remedy specifically available under the Solicitors Act 1843) and judgment was entered accordingly. The client then appealed, first to the Court of Appeal, and subsequently to the House of Lords, on the grounds that there was no jurisdiction to order judgment to be entered on the taxing master's certificate because neither the order to tax nor the certificate contained any direction for the client to pay the amount certified to be due from him. The House of Lords dismissed the appeal on two grounds :

(a) that the course of conduct of the client made it apparent that he assented to the question of the existence of the lump sum agreement being determined by the taxing master, and in these circumstances the client could not raise any question of the taxing master's jurisdiction to deal with the matter as he did;

(b) that the certificate of the taxing master was made final and conclusive by the terms of s 43 of the Solicitors Act 1843 as to amount, but it could not contain any direction to pay because the taxing master had no jurisdiction to order payment. However, under the terms of s. 43, payment could be enforced by an application for judgment.

Although there is no specific enabling provision in Singapore for conversion of the Registrar's certificate into a judgment, I cannot see any essential difference between the factual position in *Hamilton's* case and the present case. Once the validity of the deputy Registrar's certificate was not challenged, it must follow that it would have to be enforced by a separate action - otherwise what would be the significance of the certificate? Common law must concur with common sense in giving the plaintiffs a practical remedy to enforce the certificate.

In the second place, the issue of agreed costs had effectively been determined by the plaintiffs' application for discharge and taxation in SIC No. 2318 of 1990 heard on 20 July 1990. That was the time for the defendants to argue that there should be no taxation since there was a binding agreement as to fixed costs under s. 108 of the Legal Profession Act (1985 Edn). According to defence Counsel the argument was raised but was not accepted. The obvious course of action for defence Counsel under those circumstances was to file an appeal against the order of the Senior Assistant Registrar directing a taxation. This was not done, nor was any other action taken by the defendants to enforce the alleged agreement under s. 110 of the Legal Profession Act 1985 Edition (now s. 113 of the 1990 Edition). Accordingly, the issue of the defendants' liability to pay taxed costs was precluded from further re-litigation upon the expiry of the appeal period, either by way of cause of action estoppel or issue estoppel and no special circumstances existed in this case to prevent the operation of this doctrine (see *Arnold v. National Westminster Bank PLC* [1991] 2 WLR 1177).

I make one other comment, although this point was not raised before me. The plaintiffs' application for an order for taxation was made pursuant to s. 117(1) of the Legal Profession Act 1985 Edition. Such an application should have been made on a petition of course rather than by way of summons in chambers, but the irregularity was clearly not such as to nullify the application or the subsequent taxation, bearing in mind the general powers of the Registrar to tax costs under O. 59 r. 12.

There is a further reason why I allowed the appeal. On the material before me at the hearing there was no evidence that the defendants had made any agreement with the plaintiffs either through themselves or their agents as to fixed fees. The affidavit of Ms. Engelin Teh filed in the defendants' summons made reference to some discussion on this point but denied any firm agreement between the parties as to fixed costs. In any event this affidavit was not relied on by defence Counsel before me. No defence was filed by the defendants in this suit nor was any affidavit sworn personally by the defendants. Their solicitor filed an affidavit annexing the 7176 defence. The 7176 defence (the material parts of which have been set out earlier) was specific to the 7176 defendants, as it pleaded that the plaintiffs had made representations and statements about agreed fees to the 7176 defendants. There was no allegation in the 7176 defence that such representations and statements had been made to the defendants in this suit. The solicitor's affidavit in this suit also annexed the Peter Koh Affidavit. That affidavit alleged that an agreement had been reached between a group of several purchasers on the one hand and the plaintiffs on the other with regard to fixed fees for the Goodluck Garden claims. The Patrick Koh Affidavit did not say that either of the defendants was in the group that participated in the discussions with the plaintiffs nor did it say that those purchasers were acting on behalf of all purchasers (including the defendants) who chose to engage the plaintiffs as their solicitors for the Goodluck Garden claims. Accordingly, even if the allegations in the Patrick Koh Affidavit were true, they were of no assistance to the defendants since:

(a) there was no evidence that any agreement had been reached between the defendants and the plaintiffs as to fixed fees, any agreement having been reached between the Patrick Koh group of purchasers and the plaintiffs being *res inter alios acta* as far as the defendants were concerned; and

(b) even if such agreement had been intended to cover the position of the defendants, they would be unable to rely on it because of the doctrine of privity of contract.

There was therefore no triable defence to the claim of the plaintiffs and I gave judgment accordingly.

Also found at [1992] 1 CLJ 746